

In the Court of Appeals of the State of Alaska

David Christopher Nordlund,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13607**

Order

Date of Order: **December 16, 2021**

Trial Court Case No. **3AN-19-04232CR**

The Appellant, David Christopher Nordlund, is represented in this appeal by the Public Defender Agency. At Nordlund's request, the Agency has filed a motion requesting a remand for a representation hearing. The Agency explains that Nordlund believes the Agency may have a conflict of interest precluding its representation of him on all the issues presented in this appeal.

The potential conflict arose when the Agency identified what it considers a positional conflict regarding one of the issues in this appeal — in particular, an issue concerning Criminal Rule 45 — and then moved to sever that issue from the rest of the appeal. The motion to sever is currently pending, and is opposed by the State.

Accordingly, **IT IS ORDERED:**

1. This case is remanded to the superior court for a hearing concerning the Agency's representation of Nordlund in this appeal.

a. If the superior court determines that the Agency has a conflict precluding its representation of Nordlund on all the issues presented in this appeal, or if the superior court determines that the Agency has a conflict only on the Criminal Rule 45 issue, but Nordlund is unwilling to have a conflict counsel represent him solely on the

Criminal Rule 45 issue, then the superior court shall appoint new counsel to represent Nordlund at public expense in this appeal. The superior court shall order appointed counsel to promptly file an entry of appearance with the Office of the Appellate Clerk.

b. If the superior court determines that the Agency has a conflict only on the Criminal Rule 45 issue, and Nordlund is willing to continue with representation by the Agency, and have conflict counsel represent him solely on the Criminal Rule 45 issue, then the superior court shall appoint new counsel to represent Nordlund at public expense on the Rule 45 issue. The superior court shall order appointed counsel to promptly file an entry of appearance with the Office of the Appellate Clerk.

c. If the superior court determines there is no conflict of interest, then the Public Defender Agency shall continue to represent Nordlund.

2. The superior court is directed to provide this Court with a report on this matter on or before **January 6, 2022**. If necessary, at the request of the superior court, this deadline may be extended.

3. The briefing is stayed until this matter is resolved. The Appellate Clerk will issue a new notice.

4. The motion to sever will be held in abeyance until the superior court provides its report on this matter.

Entered under the authority of Chief Judge Allard.

Nordlund v. State - p. 3
File No. A-13607
December 16, 2021

Clerk of the Appellate Courts

A handwritten signature in black ink, appearing to read 'Kaitlin D'Eimon', written over a horizontal line.

Kaitlin D'Eimon, Deputy Clerk

cc: Court of Appeals Judges
Trial Court Clerk

Distribution:

Email:
McFarland, Renee, Public Defender
Harber, Amanda J., Public Defender - Contract
Rosenstein, Kenneth M.